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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE CAPACITORS ANTITRUST
LITIGATION**

This Document Relates to:

ALL DIRECT PURCHASER ACTIONS

) MDL No. 2801

) Master File No.: 3:17-md-02801-JD

) Case No.: 3:14-cv-03264-JD

) **CERTAIN DEFENDANTS’
OPPOSITION TO SECTION III.D OF
CISCO AND APTIV’S MOTION FOR
AN ORDER APPROVING THEIR
SECOND-ROUND SETTLEMENT
CLAIMS**

Defendants Hitachi Chemical Co., Ltd., Hitachi AIC Inc., Hitachi Chemical Co. America, Ltd. (collectively, “Hitachi Chemical”), Soshin Electric Co., Ltd., and Soshin Electronics of America, Inc. (collectively, “Soshin,” and together with Hitachi Chemical, “Defendants”) hereby submit this response in opposition to Section III.D of Cisco Systems, Inc. (“Cisco”) and Aptiv Services US, LLC fka Delphi Automotive LLP’s (“Aptiv,” and together with Cisco, “Settlement Class Members”) Motion for an Order Approving Their Second-Round Settlement Claims (“Motion”), MDL Dkt. No. 473.¹ In their Motion, Settlement Class Members seek as alternative relief a declaratory judgment that is nothing more than an untimely objection to the June 2018 Court approved settlements between Defendants and the Direct Purchaser Plaintiffs (DPPs) and an untimely effort to avoid the September 2018 final judgments adjudicating the Settlement Class Members’ claims. Cisco and Aptiv received notice of the settlements, had the opportunity to object and opt out, were advised by sophisticated legal counsel, and clearly understood the issues and what was at stake. Neither Cisco nor Aptiv opted out or objected to the settlements or sought relief from the final judgments. The Settlement Class Members’ tardy request for declaratory judgment revisiting the settlements should be denied. Having settled and paid the DPPs, Defendants are entitled to finality and peace.

BACKGROUND

Over fourteen months ago, the DPPs moved for preliminary approval of their settlements with Hitachi Chemical and Soshin, and for approval of their proposed notice plan to all class members. Dkt. No. 1989. This motion was approved without opposition on March 2, 2018. Dkt. No. 2075. The Court ordered that all opt-out requests must be submitted by no later than April 23, 2018, and that any objections be filed by no later than May 18, 2018. Dkt. No. 2075-1 at 10-11. Cisco and Aptiv responded to the notice and took part in the settlement by submitting settlement claims in April 2018. MDL Dkt. No. 391 at 6; *see also* MDL Dkt. No. 391-6 at 3 (email correspondence between Settlement Class Members and DPPs showing that Cisco and Aptiv

¹ Unless otherwise noted, docket entries from case number 3:14-cv-03264-JD are referenced as “Dkt. No. ___” and docket entries from case number 3:17-md-02801-JD are referred to as “MDL Dkt. No. ___.”

1 submitted claims from the DPPs' settlements with Hitachi Chemical and Soshin on or before April
2 23, 2018).

3 On May 3, 2018, the DPPs moved for final approval of their settlements with Hitachi
4 Chemical and Soshin, noting that "there were three (3) fewer corporate families that . . . requested
5 exclusion for these Settlements than in the First Round" and that they "received no objections to the
6 Settlements." Dkt. No. 2107 at 2-3. Neither Cisco nor Aptiv submitted a request for exclusion
7 from either settlement prior to the opt-out deadline. *See* Dkt. Nos. 2109 & 2110; *see also* Dkt Nos.
8 2153-3 & 2153-4. Similarly, neither Cisco nor Aptiv objected to either settlement prior to the
9 deadline. *See* Dkt No. 2153 at 2.

10 The Court granted final approval of the DPPs' settlements with Hitachi Chemical and
11 Soshin on June 28, 2018, finding for both settlements that "the prerequisites to a class action under
12 Rule 23 are satisfied for settlement purposes," the settlement notices disseminated "met the
13 requirements of due process and provided due and adequate notice" of the settlement proceedings,
14 and the plan proposed for distributing the settlement proceeds is "in all respects, fair, adequate, and
15 reasonable." Dkt. No. 2166. The Court entered final judgment of dismissal of the DPPs' actions
16 against Hitachi Chemical and Soshin on September 21, 2018. Dkt Nos. 2194 (final judgment as to
17 Soshin), 2195 (final judgment as to Hitachi Chemical). The Court's final judgment orders included
18 a list of entities that opted out of the DPPs' settlements with Hitachi Chemical and Soshin. *See*
19 Dkt. Nos. 2194-1 & 2195-1. Neither Cisco nor Aptiv were included on this list. Both dismissal
20 orders stated that they "constitute[d] a final judgment and separate document for purposes of
21 Federal Rule of Civil Procedure 58(a)."

22 Nearly five months after the Court granted final approval of the DPPs' settlements with
23 Hitachi Chemical and Soshin, the Settlement Class Members filed a motion related to settlement
24 payment disputes with the DPPs, based on the settlements with Hitachi Chemical and Soshin.
25 MDL Dkt. No. 391. Indeed, their filing confirmed that the Settlement Class Members remained
26 part of the Hitachi Chemical and Soshin settlement classes and did not opt out of either settlement.
27 *See id.* (document captioned "**Settlement Class Members** Cisco Systems, Inc. and Aptiv Services
28

US, LLC fka Delphi Automotive LLP’s Opposition”) (emphasis added). Notably, this filing did not request declaratory judgment as outlined in Section III.D of the instant Motion. That request was first made on February 8, 2019 – more than five months after the Court entered final judgment as to all members of the Hitachi Chemical and Soshin settlement classes, and nearly eight months after the Court granted final approval of the settlements at issue. MDL Dkt. No. 473. By failing to act sooner—*i.e.*, before the deadlines to seek exclusion, object to the settlements, and/or seek relief from the final judgment—the Settlement Class Members have waived any opportunity to object or opt-out from the DPPs’ settlements with Hitachi Chemical and Soshin or to avoid the effects of final judgments.

ARGUMENT

It is bedrock under Ninth Circuit law that settlement class members are not given “a second chance to opt out.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of S.F.*, 688 F.2d 615, 634-35 (9th Cir. 1982) (“All named plaintiffs and class members were given the opportunity to exclude themselves from the class. . . . [Plaintiff’s] argument amounts to a request to now exercise that option once passed over, and after being fully informed of the terms of the settlement.”); *see also Low v. Trump Univ., LLC*, 881 F.3d 1111, 1121 (9th Cir. 2018) (rejecting argument that due process requires a second opt-out opportunity). Courts routinely reject efforts by parties to revisit the terms of a settlement after the opt-out and/or exclusion filing deadline contained in the notice to class members expired. *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, No. 8:10ML 02151 JVS (FMOx), 2013 U.S. Dist. LEXIS 123298 (C.D. Cal. July 24, 2013) (“*Toyota*”) is instructive here. In *Toyota*, some parties filed objections to the terms of the proposed settlement agreements. *Id.* at *222. But the court rejected those objections noting that, “[t]o the extent that Objectors believed that the proposed settlement left them uncompensated (or unfairly compensated) . . . they were afforded the opportunity to opt out. Objectors failed to avail themselves of that opportunity. These Objectors are represented by able counsel; thus, the Court presumes their failure to opt out is a reasoned judgment rather than a chance occurrence or uninformed choice.” *Id.*; *see also Skilstaf, Inc. v. CVS Caremark Corp.*, No. C 09-02514 SI, 2010

1 U.S. Dist. LEXIS 2662, at *18 (N.D. Cal. Jan. 13, 2010) (when a party makes a conscious decision
2 to remain in a settlement knowing it could have opted out, it “undermine[s] its contention that it
3 lacked sufficient notice of the scope of the release”), *aff’d*, 669 F.3d 1005 (9th Cir. 2012).

4 So too here. The Settlement Class Members were fully informed of the terms in the DPPs’
5 settlements with Hitachi Chemical and Soshin, as confirmed by the Court’s findings on final
6 approval. Indeed, the terms regarding claims released under these settlement agreements mirror the
7 terms contained in the DPPs’ first round of settlements agreements, the subject of which led to
8 similar disbursement disputes between the DPPs and the Settlement Class Members. *See* MDL
9 Dkt. No. 327; *compare* Dkt. No. 1989-3 at 15-16 (Hitachi Chemical’s settlement with the DPPs)
10 *with* Dkt. No. 1298-3 at 15-16 (NEC Tokin’s settlement with the DPPs). The Settlement Class
11 Members, represented by experienced counsel at each turn, could have opted out or objected to the
12 settlements at issue during the notice period and prior to the applicable deadlines, but they decided
13 not to do so.

14 The Settlement Class Members also failed to act before the deadline for seeking relief from
15 the judgments. The Court’s final judgments, entered September 21, 2018, adjudicated the
16 Settlement Class Members’ claims in accordance with the DPPs’ settlement agreements with
17 Hitachi Chemical and Soshin. Dkt. Nos. 2194-1 & 2195-1. If the Settlement Class Members
18 desired to be excluded from or not bound to the settlements, they could have moved to alter or to be
19 relieved from the final judgments prior to the deadline last year. *See* Fed. R. Civ. P. 59(e)
20 (providing 28 days after entry of final judgment to move to alter or amend final judgments); Fed. R.
21 Civ. P. 60(c)(1) (requiring motions for relief be “made within a reasonable time”). But again, the
22 Settlement Class Members chose not to act.²

23
24 ² Even if they had moved timely, Settlement Class Members would be unable to satisfy their
25 heavy burden for relief from the final judgments. *See, e.g., Carroll v. Nakatani*, 342 F.3d 934, 945
26 (9th Cir. 2003) (explaining Rule 59(e) is an “extraordinary remedy, to be used sparingly”) (citation
27 omitted); *Harvest v. Castro*, 531 F.3d 737, 744-45 (9th Cir. 2008) (explaining Rule 60(b) affords
28 relief “under a limited set of circumstances including fraud, mistake, and newly discovered
evidence”) (citation omitted).

Having missed multiple deadlines that were fully published and known by the Settlement Class Members, their request for declaratory judgment in Section III.D amounts to an improper post hoc attempt to get a second opportunity to seek exclusion from the Hitachi Chemical and Soshin settlement classes – nearly ten months after the opt-out deadline has passed and months after the deadlines for seeking relief from final judgment. Defendants respectfully ask this Court to reject both the Settlement Class Members’ dilatory objection and untimely effort to avoid long-completed, binding settlements.

CONCLUSION

For the foregoing reasons, Cisco and Aptiv’s request for declaratory judgment as described in Section III.D of their Motion should be denied.

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